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In re Application of
Kubin et al.
Application No. 10/527,016
PCT No.: PCT/AT01/00159
Int. Filing Date: 21 May 2001
Priority Date: 23 May 2000
Atty. Docket No.: SONN:067US
For: Novel Preparation Of Hypericin
Bonded With Poly-N-Vinylamides

COMMUNICATION

This is in response to the petition under 37 CFR 1.137(b) filed on 07 March 2005.

BACKGROUND

This international application was filed on 21 May 2001, claimed an earlier priority date of 23 May 2000, and designated the U.S. The International Bureau transmitted a copy of the published international application to the USPTO on 29 November 2001. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. The 30 month time period for paying the basic national fee in the United States expired at midnight on 23 November 2002. This international application became abandoned with respect to the national stage in the United States under 35 U.S.C. 371 for failure to timely pay the basic national fee.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), the required reply in the form of the \$150.00 basic national fee is being charged to counsel's Deposit Account No. 50-1212, as authorized by the "Preliminary Amendment" filed on 07 March 2005.

Regarding requirement (2), the petition fee accompanied the petition.

Regarding requirement (3), the petition includes a statement that "The entire delay from November 23, 2002, until the filing of the Petition Under 37 C.F.R. § 1.137(b) and United States application filed pursuant to 35 U.S.C. §371(c) submitted herewith was unintentional, for the

reasons set forth below." However, the petition and the statements contained within it were made only by one of the joint inventors (Andreas Kubin) and his representative. There is no statement by either the other joint inventor (Hans Gunther Loew) or a representative of Mr. Loew as to whether Mr. Loew's actions constitute "unintentional delay" during the period from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b). Counsel must furnish either a statement from Mr. Loew or his duly appointed representative that the delay was in fact unintentional, or else a power of attorney executed by Mr. Loew in favor of present counsel. For these reasons, requirement (3) has not been satisfied.

Regarding requirement (4), no terminal disclaimer is required because the international filing date of this application is later than 8 June 1995.

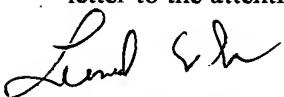
It is noted that the declaration of the inventors filed on 07 March 2005 does not comply with 37 CFR 1.497(a) and (b) because it is not signed by joint inventor Hans Gunther Loew.

DECISION

The petition under 37 CFR 1.137(b) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.



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